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February 26, 2014

VIA ECF & OVERNIGHT DELIVERY

The Honorable Claire C. Cecchi, U.S. District Judge
The Honorable Joseph A. Dickson, U.S. Magistrate Judge
U.S. District Court for the District of New Jersey
Martin Luther King, Jr. Federal Building & U.S. Courthouse
50 Walnut Street, MLK 2B & MLK 2D
Newark, NJ 07101

Re: *Lincoln Adventures, LLC v. Those Certain Underwriters at Lloyd's London*,
No. 2:08-cv-00235-CCC-JAD (Tag-Along in MDL No. 1663)

Dear Judges Cecchi and Dickson:

We write on behalf of plaintiffs in *Lincoln Adventures, LLC v. Those Certain Underwriters at Lloyd's London*, No. 2:08-cv-00235 (“*Lincoln Adventures*”), to advise the Court of a recent development and request a status conference regarding the matters pending before the Court.

On February 6, 2014, a U.K. judge, Deputy Senior Master Leslie, refused to enforce Judge Dickson’s June 28, 2013 Letter of Request for International Judicial Assistance Pursuant to the Evidence (Proceedings in Other Jurisdictions) Act of 1975 to Permit Production of Documents from Lloyd’s Market Association (“LMA”) (“Letter Rogatory”). *See* Dkt. No. 2551; Ex. A.¹

By way of background, after this Court issued the Letter Rogatory, a U.K. judge, Senior Master Whitaker, reviewed the order and directed the LMA to produce the documents sought by way of an October 8, 2013 order. *See* Ex. B. However, on October 24, 2013, the LMA, through the London office of Edwards Wildman (defendant-syndicate 2791’s counsel), challenged Senior Master Whitaker’s order and the Letter Rogatory. The LMA argued, *inter alia*, that the Letter Rogatory sought documents subject to motions pending before this Court, including documents plaintiffs contend were improperly withheld by defendants as “privileged.” In addition, the LMA argued that the documents were not relevant to the triable issues, in part because the operative

¹ Though the order was issued orally at the hearing on February 6th, it was not memorialized in a written order until February 11th, after which it was approved by the court by way of “court stamp” on February 13th. *See* Ex. A.

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complaint – which plaintiffs have moved to amend – does not contain extensive allegations about the LMA. Notably, the proposed Second Amended Class Action Complaint (“SAC”), which was drafted with the benefit of the discovery produced to date and is the subject of plaintiffs’ pending motion for leave to amend, details the role of the LMA in the anti-competitive agreements and RICO conspiracy. Nevertheless, in part because the SAC is not yet the operative complaint, Deputy Senior Master Leslie agreed with the LMA that the documents sought were not relevant to the triable issues and set aside the order of Senior Master Whitaker requiring the production of documents set out in this Court’s Letter Rogatory, on this ground, among others. Master Leslie has also ordered plaintiffs to pay the LMA’s costs incurred in conjunction with challenging this Court’s Letter Rogatory, which the LMA claims are nearly \$320,000.

The U.K. court’s order of February 6, 2014 does not preclude plaintiffs from re-applying for a letter rogatory for documents from the LMA. But, given that plaintiffs’ motions to compel and for leave to amend remain unresolved, plaintiffs are likely to run into the same predicament again. In addition, plaintiffs have tabled certain depositions and other discovery from defendants pending the outcome of the motions currently before this Court. Finally, the Court had scheduled a status conference in this case for November 15, 2013 (Dkt. No. 2597), but subsequently took the conference off calendar, stating in a minute order that the “Court will contact the parties with a new date.” Dkt. No. 2606.

For all of these reasons, plaintiffs respectfully renew their request for a conference to discuss the status of the case and the various motions pending before the Court. To that end, the following motions are fully briefed and awaiting decision:

1. Plaintiffs’ November 4, 2013 motion for leave to amend their complaint and file their proposed SAC (Dkt. No. 2603), which has been fully briefed since December 20, 2013;²

2. The parties’ April 26, 2013 joint letter regarding plaintiffs’ motion to compel certain broker compensation agreements called “lineslips” and “binding authorities” and related documents (Dkt. No. 2495), as supplemented by plaintiffs’ June 5, 2013 letter (Dkt. No. 2530) and defendants’ response to same (Dkt. No. 2537). Permitting plaintiffs leave to file their SAC may moot defendants’ objections to the production of documents subject to this motion (*see* Dkt. No. 2585);

² If granted, plaintiffs’ motion for leave to amend would moot defendants’ motion to dismiss filed on December 4, 2012. *See* Dkt. No. 2500. On November 25, 2013, the Court administratively terminated Defendants’ motion to dismiss. *See* Dkt. No. 2612. Since that time, on December 20, 2013, the parties completed the briefing on the motion for leave to amend. *See* Dkt. No. 2617. On December 23, 2013, the Court issued a minute entry, ruling that plaintiffs’ motion for leave to amend was set for January 21, 2014, and would be decided on the papers.

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3. The parties' May 10, 2013 joint letter regarding plaintiffs' motion to compel: (i) documents improperly withheld by defendants under a claim of privilege; (ii) certain defendants' refusal to provide definitions for the data fields provided; (iii) defendants' refusal to search certain key witnesses' documents; and (iv) defendants' refusal to run certain search terms relevant to plaintiffs' claims (Dkt. No. 2513), as supplemented by plaintiffs' June 5, 2013 letter (Dkt. No. 2530) and defendants' response to same (Dkt. No. 2537);

4. Certain defendant-syndicates' letter brief of June 24, 2013, seeking a protective order to prevent the depositions of their chief executive officers and non-executive directors (Dkt. No. 2544), as well as plaintiffs' June 28, 2013 response to same (Dkt. No. 2548);

5. Plaintiffs' September 26, 2013 motion to compel the defendants to produce data regarding insurance policies sold by defendants in the United States (Dkt. Nos. 2579, 2586, 2591); and

6. Plaintiffs' September 30, 2013 Letter of Request for International Judicial Assistance Pursuant to the Evidence (Proceedings in Other Jurisdictions) Act of 1975 to Permit Production of Documents and Testimony from certain individuals at Lloyd's Corporation (Dkt. No. 2581). This request would be mooted in part or whole by granting plaintiffs' motion for leave to amend.

We respectfully request that the Court schedule a status conference to discuss these matters.

Yours respectfully,



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CERTIFICATE OF SERVICE

I hereby certify that on February 26, 2014, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I caused to be e-mailed the foregoing document or paper via the e-mail distribution list to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on February 26, 2014.

s/ Rachel L. Jensen

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